



April 10, 2009

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## ENGROSSED HOUSE BILL No. 1278

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DIGEST OF HB 1278 (Updated April 8, 2009 1:34 pm - DI 106)

**Citations Affected:** IC 8-1; noncode.

**Synopsis:** Water and utilities. Urges the legislative council to assign to a study committee the topic of water rights, drainage, and utilities. Prohibits a municipality or other governmental unit from exercising eminent domain with respect to certain utilities or from requiring certain utilities to sell certain property to the municipality or governmental unit.

**Effective:** Upon passage; July 1, 2009.

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**Smith M, Cheatham, Hinkle,  
Bischoff**

(SENATE SPONSORS — WALKER, BRAY, STEELE, LANANE)

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January 13, 2009, read first time and referred to Committee on Natural Resources.  
February 19, 2009, amended, reported — Do Pass.  
February 23, 2009, read second time, ordered engrossed. Engrossed.  
February 24, 2009, read third time, passed. Yeas 83, nays 13.

SENATE ACTION

March 2, 2009, read first time and referred to Committee on Judiciary.  
April 9, 2009, amended, reported favorably — Do Pass.

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EH 1278—LS 7371/DI 77+



April 10, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1278

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A BILL FOR AN ACT to amend the Indiana Code concerning water and utilities.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 8-1-30-6 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2009]: Sec. 6. **While the utility company is**  
3 **under review under section 3 of this chapter**, a municipality or other  
4 governmental unit may not require a utility company ~~that provides~~  
5 ~~water or sewer service~~ to sell property used in the provision of ~~such~~  
6 service to the municipality or governmental unit under IC 8-1-2-92,  
7 **under IC 8-1-2-93**, or otherwise, ~~unless the procedures and~~  
8 ~~requirements of this chapter have been complied with and satisfied.~~  
9 **and may not exercise the power of eminent domain to acquire the**  
10 **utility company's property that is used in the provision of service.**

11       SECTION 2. [EFFECTIVE UPON PASSAGE] **The general**  
12 **assembly urges the legislative council to assign to an interim or**  
13 **statutory study committee the topic of water rights, drainage, and**  
14 **utilities (including utility easements). If a committee is assigned the**  
15 **topic recommended for study by this SECTION, the committee**  
16 **shall consider the following:**

17       (1) **Water and drainage issues as they relate to urban and**

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EH 1278—LS 7371/DI 77+

1 rural areas.

2 (2) Water and drainage issues as they affect the:

3 (A) construction of Class 2 structures;

4 (B) development of land for residential purposes;

5 (C) development of land for commercial and industrial  
6 purposes; and

7 (D) operation of utilities (including utility easements).

8 (3) The appropriate role of drainage boards.

9 (4) The appropriate role of condemnation with respect to  
10 water rights, drainage, and utilities (including utility  
11 easements).

12 (5) Whether the common enemy doctrine of water diversion  
13 should be retained, modified, or abrogated.

14 SECTION 3. An emergency is declared for this act.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Natural Resources, to which was referred House Bill 1278, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 9 through 17, begin a new paragraph and insert:

**"Sec. 2. Except as provided in section 5 of this chapter, a person who unreasonably improves the person's land by knowingly collecting, concentrating, and discharging the diffused surface water from the person's land as a body on a neighboring property so that the water:**

**(1) stands on another person's land in an unusual quantity for a prolonged period; or**

**(2) passes into or over another person's land in a large quantity;**

**is liable for the actual damage caused to the other person by the unreasonable altered flow of diffused surface water."**

Page 2, delete line 1.

Page 2, line 2, delete "A" and insert **"Except as provided in section 5 of this chapter, a"**.

Page 2, line 2, delete "the altered flow of" and insert **"a landowner's actions under section 2 of this chapter"**.

Page 2, line 3, delete "water or diffused surface water".

Page 2, line 5, delete "(a)".

Page 2, delete lines 8 through 10, begin a new paragraph and insert:

**"Sec. 5. This chapter does not apply to a person engaged in either or both of the following:**

**(1) Building Class 2 structures (as defined in IC 22-12-1-5(a)(1)).**

**(2) Developing land for residential purposes with appropriate local drainage approval."**

and when so amended that said bill do pass.

(Reference is to HB 1278 as introduced.)

BISCHOFF, Chair

Committee Vote: yeas 8, nays 0.

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## COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1278, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning water and utilities.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1278 as printed February 20, 2009.)

BRAY, Chairperson

Committee Vote: Yeas 11, Nays 0.

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